

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  MIDWEST DATACOM, INC.	DOCKET NOS. TCU-04-6 WRU-04-13-3763
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**ORDER GRANTING APPLICATION, APPROVING CONCURRENCE IN MAPS,  
AND GRANTING WAIVER**

(Issued April 27, 2004)

On March 26, 2004, Midwest Datacom, Inc. (Midwest Datacom), filed with the Utilities Board (Board) an application for issuance of a certificate of public convenience and necessity, pursuant to Iowa Code § 476.29 (2003), stating its intention to provide local exchange service in the exchanges currently served by Qwest Corporation (Qwest). An amendment to the application was filed on April 20, 2004. The application and amendment have been identified as Docket No. TCU-04-6. Midwest Datacom has provided the qualifications of its company officers and financial statements and has stated it will support a 2-PIC methodology for dialing parity.

Iowa Code § 476.29(2) provides that a local exchange carrier shall not be denied a certificate if the Board finds that the applicant “possesses the technical, financial, and managerial ability to provide the service it proposes to render and the board finds the service is consistent with the public interest.”

The Board has reviewed Midwest Datacom's application and finds the necessary technical, financial, and managerial abilities to provide local exchange service have been demonstrated. It is in the public interest to approve Midwest Datacom's application.

Midwest Datacom also states that its service area will mirror the service territory of the exchanges and service area maps of Qwest as they are currently filed and may be modified in the future. Iowa Code § 476.29(4) requires that each certificate define the service territory in which land-line local telephone service will be provided and authorizes the Board to promulgate rules establishing the requirements for filing maps showing the service territory. Subrule 199 IAC 22.20(3) requires that all utilities have maps on file with the Board that show exchange boundaries. The Board finds that Midwest Datacom has complied with the statutory and rule requirements by concurring in the exchange maps of Qwest.

Midwest Datacom requests the Board waive the requirements of 199 IAC 16.5(2) and 22.3(1). The waiver requests are identified as Docket No. WRU-04-13-3763.

Midwest Datacom requests a waiver of 199 IAC 16.5(2), which requires the keeping of records according to the uniform systems of accounts. Midwest Datacom states it will maintain its books in accordance with generally accepted accounting principles (GAAP). The Board finds this waiver should be granted since records kept in accordance with GAAP accounting are acceptable for a competitive local exchange service provider.

Midwest Datacom also requests a waiver of 199 IAC 22.3(1), requiring it to independently publish a directory. The Board will grant the waiver based upon Midwest Datacom's statement that it will arrange for its customers to be included in the directories published in the areas it provides local exchange service.

Rule 199 IAC 1.3 states that the Board may grant waivers if it finds, based upon clear and convincing evidence, that the application of the rule would pose an undue hardship, the waiver would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver requests as described above and finds that the waiver meets the four criteria of the rule and the evidence in support of the waiver is clear and convincing.

Adherence to these rules would be an undue hardship on Midwest Datacom because each rule would involve additional expense without necessity or benefit. The Board finds there are no substantial legal rights of any person that are affected by these waivers and there is no statute that specifically mandates the actions waived. Additionally, the Board finds that there will be substantially equal protection for health, safety, and welfare provided since the actions waived will be completed under different circumstances.

Midwest Datacom has not filed proposed tariffs for Board approval setting out the prices, terms, and conditions of providing local exchange service. The Board

finds that a certificate should not be issued to Midwest Datacom until it has approved tariffs.

**IT IS THEREFORE ORDERED:**

1. The application for a certificate of public convenience and necessity filed by Midwest Datacom, Inc., on March 26, 2004, is granted, subject to the requirement that follows.
2. The Board will issue a certificate of public convenience and necessity allowing Midwest Datacom, Inc., to provide local exchange service upon approval of tariffs reflecting the prices, terms, and conditions of local exchange service in Iowa.
3. Midwest Datacom, Inc.'s concurrence in the maps and boundaries of the exchanges of Qwest Corporation is approved.
4. The waiver of 199 IAC 16.5(2) and 22.3(1), identified as Docket No. WRU-04-13-3763, is granted as described in this order.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 27<sup>th</sup> day of April, 2004.